

CHAPTER IIB

SPECIAL INSPECTION PROCEDURES

A. Follow-up and Monitoring Inspections.

1. Inspection Procedures.

Follow-up inspections are conducted primarily to determine if previously cited violations have been corrected.

Monitoring inspections are conducted when hazard correction takes place over a lengthy period of time. The purpose of monitoring inspections is to make sure the process of hazard correction is taking place and that employees are protected during this process.

Follow-up inspections and monitoring inspections are conducted when there has been an issuance of Willful or Repeated violations. Follow-up or monitoring inspections would not normally be conducted when evidence of abatement is provided by the employer or employee representatives. However, when, for example, failure to abate notifications and/or citations related to imminent danger situations are issued, follow-up or monitoring inspections are appropriate.

Follow-up inspections shall be conducted within 30 days following the latest abatement date and shall take priority over (1) programmed inspections and (2) unprogrammed inspections classified as Other-than-Serious. Follow-up inspections should not be conducted within the 15-working day contest period unless high gravity Serious violations are involved.

2. **When a Follow-up Inspection is Required:** A follow-up inspection is required when any of the following exist:

- a. Willful or Repeated violations;
- b. Fatalities;
- c. When the employer fails to respond to a request for notification of abatement action by letter or other means after having been contacted several times; and
- d. Whenever the Compliance Manager believes that particular circumstances (e.g., the number or the type of violations, past history of the employer, complex engineering controls, etc.) indicate the need for a follow-up.

There shall be no additional inspection activity unless, in the judgment of the CSHO, there have been significant changes in the workplace. These changes, in addition to inspection modifications, must be fully documented.

- A. 3. Initial Follow-up.** The initial follow-up is the first follow-up inspection after issuance of the citation.
- a.** If a violation is found not to have been abated, the CSHO shall inform the employer that the employer is subject to both a Notification of Failure to Abate Alleged Violation and to additional daily penalties that are proposed as long as such failure or violation continues.
 - b.** Failure to comply with enforceable interim abatement dates involving multi-step abatement shall be subject to a Notification of Failure to Abate Alleged Violation.
 - c.** Where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the regulatory requirements, a Notification of Failure to Abate Alleged Violation shall normally be issued. If the employer has exhibited good faith, a late request for extension of abatement date for extenuating circumstances may be considered.
 - d.** Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no Failure to Abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a Notification of Failure to Abate Alleged Violation shall be issued.
 - e.** There may be times during the initial follow-up when, because of an employer's flagrant disregard of a citation, an item on a citation, or other factors, it would be appropriate to bring action for an injunction under § 40.1-49.4.F. of the *Code of Virginia*. The Compliance Manager shall notify the Office of Legal Support Director of all the particular circumstances of the case for referral to the Assistant Attorney General and appropriate Commonwealth's Attorney.
- 4. Second Follow-up.** Any subsequent follow-up after the initial follow-up dealing with the same violations is a second follow-up.
- a.** After the Notification of failure to Abate Alleged Violation has been issued, the Compliance Manager shall allow a reasonable time for abatement of the violation before conducting a second follow-up. If the employer contests the proposed additional daily penalties, a follow-up inspection shall still be scheduled to ensure correction of the original violation.

- A.4.**
- b.** If a second follow-up inspection reveals that the employer still has not corrected the original violations, the Compliance Manager shall immediately contact the Director of the Office of Legal Support in writing, detailing the circumstances so that the matter can be referred to the Assistant Attorney General and to the appropriate Commonwealth's Attorney for action in accordance with § 40.1-49.4.F. of the *Code of Virginia*.
 - c.** **Violation Recurs After Abatement.** If it is determined that the originally cited violation was abated but then recurred, a citation for a Repeated violation may be appropriate. A "Repeated violation" means that the violation has recurred after a successful abatement. See Chapter IV, sections C.1. and C.2.m. for more information on Repeated Violation versus Failure to Abate.

5. Follow-up and Monitoring Reports.

A photo copy of the original VOSH-1B form shall be used for documenting correction of Willful, Repeated and Serious violations and failure-to-correct items during the follow-up inspections. If violation items were appropriately grouped in the VOSH-1B in the original case file, they may be grouped for the follow-up inspection; if not, individual copies of the original VOSH-1B forms shall be used for each item. The correction of other-than-serious violations may be documented in the narrative portion of the case file.

- a.** **Proper Documentation.** The correction circumstances observed by the CSHO shall be specifically described in the VOSH-1B, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements or readings, or other conditions. Brief summations such as "corrected" or "in compliance" will not be accepted as proper documentation for violations which are corrected. When appropriate, this written description shall be supplemented by a videotape or a photograph to illustrate correction circumstances.
- b.** **Sampling.** The CSHO conducting a follow-up inspection to determine compliance with violations of air contaminants and noise standards shall decide whether sampling is necessary, and if so, what kind; i.e., spot sampling, short-term sampling, or full-shift sampling. If there is reasonable probability of an issuance of a Notification of Failure to Abate Alleged Violation, full-shift sampling is required.
- c.** **Narrative.** The CSHO shall include in the narrative the findings of the inspection, along with recommendations for action. In order to reach a valid conclusion when recommending action, it is important to have all the pertinent factors available in an organized manner.

- A.5.**
- d. Failure to Abate.** In the event that any item has not been abated, complete documentation shall be included on a VOSH-1B.
- 6. Follow-up Files.** A copy of the follow-up inspection reports shall be included with the original (parent) case file.
- 7. Conduct of Monitoring Inspection (Extensions of Abatement and Long-term Abatement).**
- a. General.** An inspection shall be classified as a monitoring inspection when a safety and health inspection is conducted for one or more of the following purposes:
 - (1)** To determine the progress an employer is making toward final abatement;
 - (2)** To ensure that the target dates of a multi-step abatement plan are being met;
 - (3)** To ensure that an employer's petition for the modification of abatement dates is made in good faith and that the employer has attempted to implement necessary controls as expeditiously as possible;
 - (4)** To ensure that the employees are being properly protected until final controls are implemented;
 - (5)** To ensure that the terms of a permanent variance are being met;
 - (6)** To provide abatement assistance for items under citation;
 - (7)** To ensure that the terms of a corporate-wide settlement agreement are being carried out;
 - b. Specifics.**
 - (1)** Monitoring visits shall be conducted for requests for modification of abatement dates on Serious, Willful and Repeated violations which would extend the final abatement date by more than one year from the citation issuance date.
 - (a)** These inspections shall be conducted as soon as possible after first contact with the employer but no later than 15 working days following the receipt of certification of posting, unless an extension is requested from and granted by the Commissioner.

A.7.b.(1)

- (b)** Such inspections shall have a priority equal to that of serious complaints. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- (2)** Monitoring visits in response to requests for modifications of abatement date for Other-than-Serious violations or for Serious, Willful or Repeated violations which would result in a final abatement date of one year or less from the citation issuance date shall be scheduled at the discretion of the Compliance Manager, based on the gravity of the violation and on resource availability.

 - (a)** These inspections shall be conducted as soon as possible after first contact with the employer, but no later than 15 working days following the receipt of certification of posting, unless an extension is requested from and granted by the Commissioner.
 - (b)** Such inspections shall have a priority equal to that of Serious complaints. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- (3)** Monitoring visits shall be scheduled to check on progress made on long-term or multi-step abatement plans whenever abatement dates extend beyond one year from the issuance date of the citation.

 - (a)** These inspections shall be scheduled every six months, counted from the citation date until final abatement has been achieved for all cited violations. If the case has been contested, the final order date, rather than the citation date, shall be used as a starting point. A settlement agreement may specify an alternative monitoring schedule.
 - (b)** If the employer is submitting satisfactory quarterly progress reports and if, after careful review, that these reports reflect adequate progress on implementation of control measures and adequate interim protection for employees, a monitoring inspection may be conducted every 12 months counted from the date of the final order.
 - (c)** Such inspections shall have a priority equal to that of serious complaints. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.
- (4)** Monitoring visits shall be scheduled to verify compliance with the terms of granted variances.

A.7.b.(4)

- (a)** The Compliance Manager shall review each variance annually to determine if an inspection is warranted based on:

 - 1** Significant differences from standards;
 - 2** No monitoring for current and two previous fiscal years; or
 - 3** Employer not in compliance with terms on previous inspections.
 - (b)** Such inspections shall have a priority equal to that of a serious complaint.
 - (c)** A report on the results of these monitoring visits shall be sent by the Compliance Manager to the Office of Legal Support through the Program Director.
- (5)** Monitoring visits shall be scheduled to verify compliance with the terms of corporate-wide settlement agreements.
- (6)** Monitoring visits may also be made for other reasons, as outlined elsewhere in this chapter.

c. Procedures. Monitoring inspections shall be conducted in the same manner as follow-up inspections described above.

B. Construction Inspections. CSHO responsibilities for construction inspections are the same as for general inspections (Chapter IIA). Special situations arising in the construction industry are discussed in this section.

- 1. Standards Applicability.** With the exception of the Virginia unique standards which take precedence, the federal standards published as 29 C.F.R. Part 1926 have been adopted as Virginia Occupational Safety and Health standards by the Safety and Health Codes Board. They shall apply to every employment and place of employment of every employee engaged in construction work, including non-contract construction work.
- 2. Definition.** The term “construction work” means and includes all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings or other structures and all operations connected to the above. In addition, “construction” also means the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads, and all pertinent operations. The term also means the moving of buildings and other structures, and the construction, alteration, repair, or removal of wharves, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related to these. These terms are discussed in § 130 of the

Administrative Regulations Manual. If any question arises as to whether an activity is deemed to be construction for purposes of law, the Program Director shall be consulted.

B. 3. Employer Worksite.

- a. General.** Inspections of employers in the construction industry are not easily separable into distinct worksites. The worksite is generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road building), the entire job will be considered a single worksite. In cases where such large geographical areas overlap between regional offices, generally only operations of the employer within the jurisdiction of any regional office will be considered to be the worksite of the employer.
- b. Beyond Single Regional Office.** When a construction worksite extends beyond a single regional office and the CSHO wants to extend the inspection, the Compliance Manager shall consult with the Regional Director for approval of such an extension.
- c. Administrative Convenience.** The definition of worksite in this chapter is only for administrative convenience and has no effect upon the issuance of failure to abate notifications or repeat citations which are governed by other chapters. For instructions regarding multi-employer worksites, see the guidelines regarding multi-employer worksites.

4. Entry of the Workplace.

- a. Other Agency.** The CSHO shall determine whether there is a representative of a state (i.e., VDOT) contracting agency at the worksite. If one is on site, the CSHO shall contact the representative, advise him of the inspection, and request that he attend the opening conference.
- b. Opening Conference.** In conducting the opening conference, the CSHO shall follow the procedures regarding opening conferences. Upon arrival at the construction site, the CSHO shall contact the “prime” or general contractor’s representative in charge of the job; usually, this will be the superintendent or project manager. The CSHO shall tell this individual that the purpose of this visit is to make an inspection of the worksite in order to determine compliance with VOSH requirements.

In addition, authorized representatives of employees for each contractor and subcontractor, if any, shall be informed of the inspection and invited to the opening conference. Please note that such a conference shall be a joint conference with employers unless either party requests a separate conference. Please see section B.4.f., below, for details regarding selection of representatives.

- B.4.**
- c. Common Services.** At the opening conference or at some other suitable time during the inspection, the CSHO shall ascertain who is responsible for providing such common services as sanitation, eating facilities, first-aid, etc., and where these services have been made available to all employees on the worksite. Although arrangements may have been made for one subcontractor or for the general contractor to provide common services, each employer is responsible for his own employees in this regard. Any or all of the employers can be cited for lack of such services.
 - d. Referral Inspection.** The CSHO shall, during the opening conference, inform the employer(s) that the inspection is the result of a referral.
 - e. Complaints.** If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished as follows:

 - (1) A copy of every complaint, including complaints against subcontractors, shall be provided to the general contractor.
 - (2) A copy of every complaint against the general contractor shall, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.
 - (3) A copy of every complaint against a subcontractor shall be provided to that subcontractor, and, if possible, to others whose employees may be exposed to the alleged hazard.
 - (4) Care shall be taken to protect the identity of the complainant, including the typing of handwritten complaints and the covering of all signatures.
 - f. Selecting Employer and Employee Representatives.** The CSHO shall conduct a walkaround inspection in accordance with the provisions of other walkaround procedures.

 - (1) **Authorized Representative.** Each employer is entitled to select an authorized representative to accompany the CSHO during the inspection. Similarly, the employees of each employer have the right to select an authorized representative for this purpose. If the job is unionized, then the labor organization representing the employees shall select the authorized employee representative. If there is no representative, the CSHO shall normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees shall include at least some employees of each employer and of each craft on the job.

B.4.f.

- (2) Too Many Representatives.** The CSHO shall conduct the inspection accompanied by the representatives designated by the employers and employees. However, if during the course of the inspection, the CSHO determines that, because of the large number of persons involved, the inspection is not being conducted in an effective manner or that work is being unduly disrupted, the participants shall be advised that walkaround representation will be discontinued. Instead, a reasonable number of employees will be interviewed. If the participants then agree to a limited number of representatives for accompaniment purposes, the CSHO shall resume the inspection with such representatives.
- (3) Employee Interviews.** Pursuant to § 240 of the *Administrative Regulations Manual*, during the walkaround, the CSHO shall consult with individual employees as well as the employee representative concerning working conditions, as judged appropriate by the CSHO.
- (4) Walkaround Provisions.** The main difficulty in implementing the walkaround provisions on construction sites derives from the fact that in the usual situations, there will be numerous employers on the job. If all employers and groups of employees selected a different representative to accompany the CSHO on the inspection, the group participating in the inspection could be so large that work on the worksite might be disrupted and the effectiveness of the inspection would be diminished.

 - (a)** An attempt to encourage employer and employees to select a limited number of representatives for the walkaround shall be made. It shall be pointed out by the CSHO that this arrangement makes an effective inspection possible without diminishing the accompaniment rights. If any matter comes up during the course of the inspection that requires special knowledge, the representative of the appropriate employer or employees shall be called in to participate in that phase of the inspection.
 - (b)** The CSHO may also divide the inspection into separate phases; e.g., excavation work followed by electrical work, and so forth. If this procedure is followed, the number of employer/employee representatives for each phase of the inspection can be limited to those immediately involved. The CSHO shall avoid inspecting the same areas of the worksite more than once.

g. Special Walkaround Provisions for Accident Prevention Programs

- (1)** An evaluation of each employer's accident prevention program shall be conducted during every construction inspection.

B.4.g.

- (2) The two key factors in evaluating an effective program are:

 - (a) Safety and health conditions found on the jobsite; and
 - (b) The degree of knowledge which the designated competent person has of site specific safety and health hazards.
- (3) Effective evaluation of accident prevention programs requires solid investigatory techniques. The CSHO shall ask well directed, open ended questions which require more than a yes or no answer.
- (4) The fact that there were other violations shall not be used as the sole justification for citing an employer for a deficient accident program. However, if a CSHO finds violations but no deficiencies in the accident prevention program, a detailed explanation shall be placed in the case file.
- (5) Programs shall be evaluated using the outline contained in the Appendix as a guide. Questions set out in the Appendix and the answers to them shall be incorporated into the narrative. Employee awareness, acceptance and participation in the program shall also be evaluated.
- (6) CSHOs should encourage employers to implement a formal safety and health program. The employer should be advised to incorporate their accident prevention directly into the overall management of the worksite.
- (7) Employers who fail to meet all requirements of §§ 1926.20, 1926.21 and 1926.23 shall be issued citations. Violations of these sections shall normally be grouped. In most cases, violations of §§ 1926.20 and 1926.21 should also be grouped with the most significant serious violation.
- (8) Violations of § 1926.20(b)(2) often occur because employers do not understand the meaning of the term “competent person.” CSHOs should advise employers that “competent person,” as set forth in § 1926.23, means:

“...one capable of identifying existing and predictable hazards in the surrounding or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. ”

On a multi-employer worksite, a single competent person may be designated for the entire worksite.

- B.4.g.** (9) Employers with deficient accident prevention programs shall be offered abatement assistance. Model language for informal settlement agreements is contained in the Appendix. Particular emphasis should be placed on assisting small employers. A checklist for this purpose has been included.

5. Closing Conference.

- a. General.** Upon completion of the inspection, the CSHO shall confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, at their option, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed, or violations which the employer created or controlled. The closing conference with each general contractor and subcontractor may be a joint conference with the employer and employee representatives.
- b. Contractor Names and Addresses.** Before leaving the worksite, the CSHO shall be sure to get the names and addresses of the general contractor and all other employers at the worksite who may be cited for violations.

6. Citations and Penalties

NOTE: Refer to VOSH Program Directive 02-102, or its successor, for additional information citing multi-employer worksites.

- a. Mailing.** Upon the completion of citations and notifications of penalties, the original VOSH-2 for each employer shall be sent to the employer's permanent address.
- b. Where to Post Citations.** At many construction sites, the employer (whether prime contractor or subcontractor) provides a trailer or other worksite office. Where such a facility is provided and employees are likely to be in the vicinity of the facility on a daily basis, the citation shall be posted at that location.
- (1) **Other Location.** A copy of the citation shall also be posted at any other location of the employer where employees are required to report on a daily basis. In some situations, such a location would be the employer's main or branch office; in other situations such as highway construction, the location would be the place where the employees actually work.
- (2) **No Place to Post Citation.** When no obvious place for posting the citations exists (such as, in highway construction where the trailer may be a considerable distance away and employees do not report to the trailer), the employer shall be required to furnish a suitable object on which to post the citation in a conspicuous

location or immediately adjacent to the worksite. In any case, when the citation will be exposed to rain or snow, the citation shall be protected from the elements.

C. (Reserved)

D. Fatality/Catastrophe Investigations.

1. General.

- a. Policy.** All job-related fatalities and catastrophes, however reported to the Department, shall be investigated as thoroughly and promptly as possible, including during times that are normally non-working hours for Department staff, such as evenings, weekends, and holidays. Procedures to follow when reports are received during non-working hours, and procedures to follow when a fatality or catastrophe is *potentially* job-related, are explained in sections D.2.c. and D.5.
- b. Definitions.** The following definitions apply for purposes of this chapter:

 - (1) Fatality.** An employee death resulting from a work related incident or exposure; in general, from an accident or illness caused by or related to a workplace hazard.
 - (2) Catastrophe.** The hospitalization of three (3) or more employees resulting from a work related incident; in general, from an accident or illness caused by a workplace hazard.
 - (3) Hospitalization.** To be admitted as an *inpatient* to a hospital or equivalent medical facility for examination or treatment.
- c. Reporting by Employers.** Under § 40.1-51.1 of the *Code of Virginia*, employers are required to orally report to the nearest Department Office within eight hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three (3) or more employees. A citation shall be issued for failure to report such an occurrence. If the Regional Office becomes aware of an incident required to be reported through some means other than an employer report, prior to the elapse of the eight-hour reporting period, a citable violation for failure to report does not exist.
- d. Reporting by Law Enforcement Agencies.**

 - (1)** During regular working hours, law enforcement agencies will be requested to inform the Regional Office of any workplace fatality which occurs within their jurisdictions.

D.1.d.

- (2) After regular work hours and on weekends and holidays, law enforcement agencies will be requested to notify the Compliance Manager of any workplace fatality. Each Compliance Manager shall be issued a pager so that the State Police Dispatcher may contact them after hours. Pagers may be rotated among Compliance Managers and CSHOs in a region in order to more equitably distribute the non-work hour coverage.

- e. **Reporting Within the Department.** The Compliance Manager shall inform the Regional Director and the Program Director of all job-related fatalities and catastrophes as soon as they become aware of them in accordance with the instructions given in D.2.e.(1). Other regional staff who receive reports of job-related fatalities and catastrophes which may result in high media attention or have statewide implications (and that appear to be within VOSH's jurisdiction), shall immediately notify the Compliance Manager, who shall immediately inform the Regional Director and the Program Director of all job-related fatalities and catastrophes as soon as they become aware of them in accordance with the instructions given in section D.7.a.

- (1) **Informing Central Office Personnel.** The Program Director shall inform the Commissioner of the fatality or catastrophe and provide all pertinent information. Such notification shall be immediate in any case where significant publicity or atypical circumstances may be present. In the case where initial notification is to the Central Office, the Program Director shall notify the affected Compliance Manager and the VOSH Media Contact Person in the Department. The Commissioner, or his designee, shall notify the Communications Director for Media Affairs in the Office of the Secretary of Commerce and Trade in accordance with any procedures set forth by that office. All inquiries by the press shall be referred to and responded to by the VOSH Media Contact Person.

2. Pre-investigation.

- a. **Gathering Information.** In cases where the employer's physical location is in a region different from the one where the accident occurs, the Compliance Manager in the region where the accident occurs will be contacted to coordinate the inspection. The Compliance Manager, upon notification of an accident involving a fatality or catastrophe, shall gather as much information as is available prior to scheduling an inspection. If possible, this shall be done immediately through discussion with the person reporting the accident. If knowledge of the accident is received through the media or sources other than an employer representative, the employer shall be contacted as soon as possible to obtain additional information whenever the Compliance Manager believes that such contact

will result in a more effective inspection. Such contact shall be considered advance notice and the procedures for advance notice shall be followed (see Chapter I, E.6.) For special information needed when a fatality or catastrophe is potentially job-related, see section D.5 of this Chapter.

First reports by telephone to the Compliance Manager and/or the Program Director shall provide as much of the following information as possible. Subsequent follow-up reports to the Program Director shall be made in the form of a memorandum or a copy of the VOSH-36(S) Accident Report:

D.2.a.

- (1) Name of company, location, and type of business.
- (2) Time of accident.
- (3) Type of accident (fire, explosion, building collapse, etc.).
- (4) Number of fatalities.
- (5) Number of persons hospitalized.
- (6) Number of persons unaccounted for.
- (7) When VOSH personnel are expected to arrive at the scene.
- (8) Identification of who is in charge at the scene (if known).

- b. Working Hour Notification and Forms.** If the fatality or catastrophe appears to require a VOSH investigation (i.e., it is or may be occupationally related and VOSH's jurisdiction is not pre-empted), the CSHO shall report the event to the Compliance Manager, who shall inform the Program Director and Central Office, in accordance with section D.2. of this chapter, as soon as it is verified that the fatality/catastrophe has occurred. The CSHO or Compliance Manager shall ensure that the required IMIS forms and the accident narrative are completed (see section D.6.)

NOTE: The VOSH 36(S) is a pre-inspection document and shall be completed for every fatality the Department is notified of and for every catastrophe investigated.

- c. Reports Received During Non-working Hours.** When notification of a workplace fatality or catastrophe is received during what are normally non-working hours, such as evenings, weekends, or holidays, the Compliance Manager shall obtain as much information as possible regarding the incident. The Compliance Manager shall carefully and thoroughly evaluate the information to determine whether the investigation should begin immediately. In situations where a delay could adversely affect the accident investigation, or other cases where the Compliance Manager has determined that an investigation should begin

promptly, a CSHO(s) shall be assigned and sent to the incident scene as soon as possible, without regard for the time of day or day of the week. Examples of situations where the investigation should not be delayed until normal working hours resume, include but are not limited to, an explosion or fire where the scene could change quickly, or a case where an employer with continuous operations has ceased operations until a VOSH investigation is conducted. In cases where the Compliance Manager has decided to delay the investigation, a CSHO shall be assigned no later than the next regular workday.

NOTE: In cases where the CSHO arrives at an active crime, fire or fatality/catastrophe scene, it is imperative to minimize interference and to avoid unsafe conditions for the CSHO. CSHOs shall not enter a crime or fire scene until the law enforcement officer, fire control officer, or other incident commander with active control over the scene indicates they can do so. The CSHO may conduct interviews or use other methods that do not require immediate entry to the site provided they do not interfere with activities at the scene.

- D.2.**
- d. Contact with the Employer.** Upon initial contact the employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained; namely, to determine:
 - (1)** The cause of the accident.
 - (2)** Whether the accident was related to a violation of VOSH safety or health standards.
 - (3)** What effect the violation (if any) of a standard had on the occurrence of the accident.
 - (4)** If VOSH standards should be revised or promulgated to address the type of hazardous working condition that led to the accident.
 - e. Careful Preparations.** The primary objective of a fatality or catastrophic investigation is to determine the cause of the event. Given the severity of a fatality or catastrophic event, proper pre-investigation preparation is essential to the conduct of a complete and professionally conducted investigation. Future lives and safety may depend on how effectively the VOSH investigation is performed. For this reason, and also because it is likely that the VOSH investigation will be the object of external review and public scrutiny during this time of emergency, it is imperative that the investigation be handled properly and professionally from the beginning.

It is imperative to determine the cause of the events, whether a violation(s) of VOSH safety or health standards related to the accident has occurred and how this may have contributed to the accident. The following procedures will ensure the quality and effectiveness of the investigation.

- D.2.**
- f. Selection of CSHO.** The Compliance Manager shall exercise his discretion in dispatching the most appropriately trained CSHO or CSHOs to respond as soon as possible to the fatality or catastrophe site. Should the CSHO(s) not be immediately available, the first available CSHO(s) with the most appropriate experience will be sent without delay to begin the investigation, regardless of the time of day or day of week.
 - g. Need for Additional Resources.** If resources beyond those available within the Regional Office or within VOSH, are deemed to be necessary for a proper or expeditious investigation, such external resources or experts will be required for the investigation, the Program Director and the Compliance Manager shall make the necessary arrangements to obtain such resources.

NOTE: Refer to section E.8.b., regarding selection and use of expert assistance.

- h. Equipment.** Prior to leaving for the accident scene the team or CSHO, as applicable, shall select the test equipment and the personal protective equipment necessary to support the investigation.

NOTE: Emergency testing equipment or special accident investigation instruments or protective clothing need not be set aside in Regional Offices for emergency or accident investigation use only. All equipment shall be available for regular use at any time provided it is available if needed for fatality/catastrophe investigations.

- i. Other Agency.** If another Federal or State agency is responsible for or participating in the investigation, the Compliance Manager shall ensure that the CSHO(s) are fully instructed in VOSH's relationship with the other agency and each agency's areas of responsibility.

NOTE: Also refer to Section D.8., Special Situations, regarding preemption and cooperation.

- 3. Investigation Procedures.** Every reasonable effort shall be made to determine the cause of the accident. The same general policies and inspection procedures contained in Chapter IIA are applicable for the investigation of fatalities and catastrophes, except as otherwise provided in this chapter.

D.3.

- a. **Scope.** Fatality/catastrophe investigations shall include a complete investigation of the circumstances of the accident, consistent with the purposes outlined in section D.2.d., above. During investigations which involve potential for criminal violations, emphasis must be placed on the “willfulness” of the violation. These investigations may be expanded at the discretion of the Compliance Manager.
- b. **Inspection Strategy When a Comprehensive Inspection Is To Be Performed.** Depending on the circumstances surrounding the accident, it may be necessary to conduct a comprehensive inspection of the workplace, before, concurrently with, or after the accident investigation. Other areas or operations in the establishment may have hazards similar to those that caused the accident; if so, they shall be brought to the employer’s attention immediately.

NOTE: If the employer is on a target list, a comprehensive inspection shall be conducted concurrently with or immediately after the accident investigation.

- c. **Abbreviated Opening Conference.** In most cases, investigations of fatalities and catastrophes require that the CSHO get to the location of the accident as promptly as possible. Therefore, the CSHO shall reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit, and the request for an escort by employee and employer representatives. In addition, a more extensive discussion of other opening conference topics will be conducted at the closing conference.
- d. **Investigation Documentation.** All fatality and catastrophe investigations shall be documented and, where applicable, shall include:

(1) Personal Data of Victim:

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Age
- (e) Sex
- (f) Job title.
- (g) Date of employment.
- (h) Time in position.
- (i) Training for job being performed at time of accident.

- (j) Employee deceased/injured.
- (k) Nature of injury -- fracture, amputation, etc.
- (l) Prognosis of injured employee.

D.3.d.

(2) Accident Data:

- (a) How and why did accident occur.
- (b) Physical layout.
- (c) Sketches/drawings.
- (d) Measurements.
- (e) Video/photos - identifying sources.

(3) Equipment Involved or Process:

- (a) Machine type.
- (b) Manufacturer.
- (c) Model.
- (d) Manufacturer's instructions.
- (e) Kind of process.
- (f) Condition.
- (g) Misuse.
- (h) Maintenance program.
- (i) Equipment inspection (logs, reports, etc.).
- (j) Warning devices (detectors).
- (k) Tasks performed.
- (l) Energy sources and disconnecting means identified.
- (m) Supervision or instruction provided to employees involved in accident.

(4) Witnesses:

- (a) Public.
- (b) Fellow employees.
- (c) Management.

(5) Safety and Health Program:

- (a)** Does employer have a safety or health program?
- (b)** Does the program address the type of hazard which resulted in the fatality/catastrophe?

NOTE: If the fatality/catastrophe involves a trench, a soil sample shall be taken.

(6) Behavioral Aspects Related to FAT/CAT:

- (a)** The extent of safety training provided to the employee prior to the accident.
- (b)** The exact instructions provided to the employee concerning the task to be performed.
- (c)** The degree of emphasis placed on occupational safety and health by the employer.
- (d)** Events prior to the accident that contributed to the accident or document an employer's disregard for the safety and health of employees.
- (e)** The contractual arrangements concerning safety responsibility between a prime and subcontractor.
- (f)** The competence of foremen or supervisors and the scope of authority they exercised on behalf of an employer.
- (g)** Project completion status.
- (h)** Any decisions that contributed to the accident; who made them, and why.
- (i)** Negligence on the part of the employer (including supervisory personnel) that contributed to or caused the accident.
- (j)** Employer and supervisor knowledge of a hazard, of the requirements of applicable standards, and of standard operating procedures in the industry.
- (k)** The PPE provided or not provided to the employee.
- (l)** Misconduct by an employee that contributed to the accident (including evidence of misconduct).

D.3.

- e. Families of Victims.** Family members of employees involved in fatal occupational accidents or illnesses shall be contacted at an early point in the investigations, given an opportunity to discuss the circumstances of the accident or illness, and shall be kept apprised of the general course of the investigation.

NOTE: Consistent with § 90 of the Administrative Regulations Manual and Department Policy, there shall be no release of facts or findings to any non-VOSH personnel before the investigation and subsequent litigation is completed.

NOTE: All of the following require special tact and good judgment on the part of the CSHO. In some situations, these procedures should not be followed to the letter; e.g., in some small businesses, the employer, owner, or supervisor may be a relative of the victim. In certain circumstances, such steps as issuance of a form letter may not be appropriate without some editing.

- (1) List of Victims and Next-of-Kin.** As soon as practicable after initiating the investigation, the CSHO shall attempt to compile a list of all of the accident victims and their current addresses, along with the names of individual(s) listed in the employer's records as next-of-kin (family member(s) or person(s) to contact in the event of an emergency).

If the next-of-kin or the emergency contact person cannot be determined through the employer's records or employee interviews, the Compliance Manager shall be informed. The Compliance Manager shall then make a reasonable effort to identify the next-of-kin by searching police reports, hospital admission records, coroner's records, and newspapers.

When an additional search does not identify a family member, the extent of the search shall be documented in the case file.

- (2) Information Letter.** The VOSH family information letter, located in the Appendix shall be sent to the family member(s) or the person(s) listed as the emergency contact person(s) indicated on the victims' employment records within 5 working days of the time their identities have been established.

NOTE: It is IMPERATIVE that the personal information, (i.e., full legal name, relationship, and address) regarding the family member and the deceased be ACCURATE and be reflected in all correspondence.

- (a)** The issuance of the family information letter shall be documented in the case file diary and a copy of the letter shall be included in the case file and an additional copy sent to the Office of Legal Support.

- (b) If the family information letter is returned as undeliverable, the letter and envelope shall be put in the case file and the date of the return entered in the case file.

D.3.e.

- (3) **Interviews.** The CSHO, when taking a statement from families of victims, shall explain that the interview will be kept confidential to the extent allowed by law (see Chapter IIA, D.5.e.(2)(b)), and that the interview will be handled following the same procedures as employee interviews. (See Chapter IIA, D.5.e.) The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.
- (4) **Follow-up Contact.** Follow-up contact shall be maintained with a key family member or other contact person, when requested, so that the survivors can be kept up-to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested by the family member. These contacts shall be made at appropriate times; e.g., after citation issuance, after an informal conference, after a contest, or closing of the case.
- (5) **Copy of Citations.** If as a result of the informational letter or follow-up contact, the family member requests copies of the penalties or citations issued, that request shall be considered to be under the provisions of the Virginia Freedom of Information Act (FOIA) and handled according to the Department's FOIA policy.

If requested, the victim's family members shall be provided a FOIA copy of all citations issued as a result of the accident investigation within 5 working days of verification of receipt of the citation(s) by the employer.

- (6) **Release of Information to Family.** To facilitate handling such a FOIA request within 5 working days, on the SAME DAY that the certified mail receipt (green card) is received by the regional office, the Compliance Manager shall forward a copy of the citation(s) to the Office of Legal Support in Richmond.

NOTE: As per Department policy, all FOIA requests must be handled through the Office of Legal Support within the above time frame. Therefore, it is imperative that the Compliance Manager or his designee, be responsible for forwarding a copy of the citation(s) to the Office of Legal Support on the same day that the receipt is received.

All VOSH staff are cautioned, not to mislead the family about the speed with which they can obtain a copy of the disclosable information prior to closing the case file. Staff are further cautioned that the employer's rights must be protected. There should be no premature release of facts or findings during any meeting with non-VOSH personnel, before the investigation and any subsequent litigation is completed.

- D.3.**
- f. Criminal.** Section 40.1-49.4.K., *Code of Virginia*, provides criminal penalties for an employer who is convicted of having willfully violated the law when that violation caused the death of an employee. In an investigation of this type, therefore, the nature of the evidence available is of paramount importance. There shall be early and close liaison between the Compliance Manager, the Program Director, and the Office of Legal Support Director in developing any finding which might involve a violation of § 40.1-49.4.K., *Code of Virginia*. CSHOs with criminal investigation training shall be assigned at an early stage to assist in developing the case.
 - 4. Abatement Verification.** Because of the transient nature of many of the worksites where fatalities occur and because worksites may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. Therefore, the Regional Director shall obtain abatement information from the employer along with assurance that appropriate safety and health programs have been put in place to prevent the hazards from recurring. In addition, abatement language and safety and health program implementation language shall be included in the settlement agreement. Where the worksite continues to exist, a follow-up inspection shall normally be conducted, if serious citations have been issued. A follow-up inspection need not be conducted if the CSHO has verified abatement during the inspection or if the employer has provided other proof of abatement. Refer to Chapter IV, A. and § 307 of the *Administrative Regulations Manual*, regarding abatement verification.
 - 5. Fatalities Potentially Work-Related**

 - a. Traffic Accidents, Homicides, and Airplane Crashes.** In some circumstances, such as traffic accidents which occur during the course of employment on public roadways, or homicides at a work site, a law enforcement agency is the primary investigator. The Federal Aviation Administration (FAA) is the primary investigator of airplane crashes. When these occur during the course of employment, the Compliance Manager should obtain information about the circumstances of the fatality from the investigating agency (i.e., through contact with the State Police or other investigating officer, or a copy of the appropriate law enforcement or FAA report), and use professional judgment to decide whether an inspection is necessary. If an inspection is conducted, it shall include a determination of whether the employer has an effective accident prevention program addressing hazards relative to the type of employment in which the fatality occurred.

NOTE: Vehicle accidents which occur at an employer's worksite would not be considered "traffic accidents" and shall be investigated under the procedures described in sections E.2. and E.3 of this Chapter.

- D.5. b. Heart Attacks/Natural Causes.** Deaths which occur in the workplace and allegedly are due to heart attacks or other natural causes will be investigated, to search for additional contributing factors, such as electrical shock, falling objects, hazardous atmospheres, poison, victim's location prior to death, victim's activities prior to death, etc. If the death certificate, autopsy report, or pathologist later states that the death was due to natural causes and was not work-related, the fatality investigation may be concluded provided that the search for contributing factors has been performed. However, hazards discovered during the investigation will still be cited.

6. FORMS. The CSHO shall complete the following forms using the instructions in the IMIS Compliance Forms Manual, where applicable.

- a. VOSH-1, Inspection Report.**

NOTE: When contact with employers is made on traffic accidents and homicides (for accident prevention program verification, etc.) and heart attacks (with no contributing factors), box 35 is marked as a partial inspection.

- b. OSHA-170, Investigation Summary.**

NOTE: If the fatality was determined to be the result of natural causes (i.e., heart attack, stroke, brain hemorrhage), then no more paperwork is required. The remaining form will be required in all other cases.

- c. VOSH - IW1, Inspection Worksheet (when applicable) and Accident Narrative.**

7. Reports.

- a. Notification of Central Office.** The Regional Office shall notify the Central Office of all workplace fatalities, whether an inspection is conducted or not.
- b. Pertinent Information.** It is important that the Central Office Program Directors receive, as soon as possible, all pertinent information that can be obtained from newspapers or other sources. All the pertinent facts may not be available at the time of the initial notification. As more facts become available, they can be relayed in subsequent communications.

- D.7.**
- c. Information to Be Provided.** First reports and subsequent follow-up calls shall provide as much of the following information as possible:
- (1) Name of company, location and type of business.
 - (2) Time of accident.
 - (3) Type of accident (fire, explosion, building collapse, etc.).
 - (4) Number of fatalities.
 - (5) Number of persons hospitalized.
 - (6) Names of victims and Social Security numbers (if available).
 - (7) Number of persons unaccounted for.
 - (8) When VOSH personnel are expected to arrive at the scene.
 - (9) Identify who is in charge at scene (if immediately known).
- d. Notification of IMIS.** The pink copy of the VOSH 36(S) is forwarded by the region to the IMIS section at the Central Office within five days of the opening conference with an additional copy to the Program Director.

8. Special Situations.

- a. Preemption.** There may be situations where it is not clear whether VOSH's authority to investigate fatalities or catastrophes has been preempted. In such cases the guidelines given in Chapter I, E.11., *Preemption or Jurisdiction by Another Agency*, shall be observed with the following special considerations:
- (1) **General.** If it is reasonably certain that VOSH coverage has not been preempted, the Compliance Manager shall start the investigation at once and not let potential jurisdictional problems interfere with either notification or investigation.
 - (a) If the Compliance Manager cannot resolve a preemption problem at the local level, all pertinent information shall be relayed to the Program Director and the Director of the Office of Legal Support, along with additional facts as they become available. A clear interpretation will be provided as soon as possible.
 - (b) If VOSH jurisdiction has been preempted only partially, the investigation shall be conducted as usual and all apparent violations shall be noted, including those for which jurisdiction has been preempted. A referral shall be made to the local office of the appropriate agency for such violations as soon as practicable.

D.8.a.(1)

- (c) Where prior determinations have been made that VOSH authority is preempted, such as coal mine accidents, no investigation shall be conducted.

(2) Agency Cooperation. If other state or federal agencies will be involved and are on site, the CSHO(s) team shall work with the other agencies as closely as possible to:

- (a) Obtain all available information concerning the fatality or catastrophe.
- (b) Assist each other in inspection of the accident site.

b. Use of Expert Assistance. The decision about the need for expert assistance to aid in the conduct of the investigation shall be made as soon as possible after the CSHO has arrived at the site. That decision shall be made by the Compliance Manager in consultation with the Program Director upon the recommendation of the CSHO.

(1) Choice of Experts. VOSH personnel shall generally be the first choice as experts, rather than “outside” experts. Any available VOSH 21(d) consultation personnel shall be called upon as experts whenever appropriate.

- (a) If no VOSH experts are available, OSHA National Office personnel or NIOSH personnel, in that order, are next in order of preference.

1 If OSHA Regional or National Office personnel are to be used, the Program Director shall contact the Regional Administrator, who will make the arrangements.

2 Arrangements for NIOSH experts shall be made through the Regional Administrator with the NIOSH Regional or National Office, as appropriate.

- (b) Outside experts shall generally be selected only when no one qualified is available from the above listed sources.

(2) Other State Agency. If an expert from another state agency is required, the Program Director or the Office of Legal Support Director or the shall contact the appropriate office of the other agency to arrange the details. If necessary, a letter to the appropriate state agency shall be prepared for the signature of the Commissioner to confirm telephone requests for such assistance.

D.8.b.

- (3) Consultants.** In general, a consultant or “outside expert” is a person from the private sector who is paid a fee for special expertise. Use of an outside expert shall be approved by the Commissioner prior to contacting the individual. Contractual arrangements shall be coordinated through the Program Director’s Office.
- (4) Legal Advice.** The advice of an attorney may be necessary at a very early stage of the investigation. The Compliance Manager shall contact the Assistant Attorney General through the Director of the Office of Legal Support, if assistance is required.

c. Rescue Operations. VOSH has no authority to direct rescue operations; this is the responsibility of the employer and/or of local political subdivisions or State agencies. VOSH does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers. The employer shall be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.

- (1) Consultation.** VOSH shall be available for consultation on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent VOSH personnel at the scene, shall be given freely, if requested.
- (2) Operations.** If the CSHO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the CSHO believes other, less hazardous procedures are more desirable, the employer shall be advised of this belief. The employer shall be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.
- (3) Application of Standards.** If rescue work is performed by the employer, VOSH standards are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm, considering the urgency in a particular rescue operation.
- (4) Emergency Situations.** Emergencies created by fatalities or catastrophes generally necessitate immediate rescue work, firefighting, etc., and any loss of time may increase injuries and/or fatalities. Therefore, when nonstandard equipment; e.g., tractors, bulldozers, etc., without rollover protection, is available for use in an emergency situation, VOSH shall permit its use without citing the employer rather than cause a delay waiting for equipment

which meets VOSH standards. The use of such equipment by private employers shall be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work shall warrant the issuance of citations when appropriate.

- D.8. d. Public Information Policy.** The VOSH public information policy regarding response to fatalities and catastrophes is to explain state presence to the news media. It is not to provide a continuing flow of facts nor to issue periodic updates on the progress of the investigation.
- (1) Compliance Manager.** The Compliance Manager shall refer all inquiries to the VOSH Media Contact Person. Where possible, the VOSH Media Contact Person may go to the scene to handle publicity. The investigation is not to be delayed to await the arrival of the VOSH Media Contact Person.
- (2) VOSH Media Contact Person.** The principal role of the VOSH Media Contact Person is to brief reporters there that VOSH has responded and is investigating. If a rescue operation is required, the information officer shall state, “VOSH policy is to cooperate and assist wherever possible, but the direction of such operations will be left to those experienced in such matters.”
- NOTE: In order to fulfill this role, the Compliance Manager shall provide information updates periodically to ensure that any information provided by VOSH is correct and up to date. This will also include the signing of settlement agreements.*
- (3) Other Officials.** The VOSH Media Contact Person shall inform the news media that the Commissioner of Labor and Industry and other appropriate officials are continually informed of developments.
- (4) Releasable Information.** If a CSHO is faced with media at an investigation, the inspector should immediately refer the reporter to the VOSH Media Contact person at (804) 786-6359. The CSHO should also contact the VOSH Media Contact person to alert them that the media was referred to them, and to give the following information:
- CSHO’s name, cell phone or pager number.
 - Situation – complaint, fatality, catastrophe, etc.
 - Employer’s name.
 - The reporter’s name and media outlet.

The VOSH Media Contact person will confirm to the media that VOSH is investigating, but details about the accident will have to be provided by another entity, such as the coroner's office or fire department. Information such as the identity of the victims will not be provided by the Department of Labor and Industry. If the CSHO cannot refer the media to the VOSH Media Contact person, the CSHO can provide the media with initial information, such as confirming VOSH's investigation, explanation of VOSH's role in workplace safety and health, and if necessary, a generic explanation of a VOSH investigation. Common steps taken in a VOSH investigation include interviewing management and workers, reviewing documentation, training plans, accident prevention plans, etc. The CSHO should always, however, refer the reporter to the VOSH Media Contact person at some point during the initial contact because the VOSH Media Contact person will track the investigation and provide the media with the final report.

E. Imminent Danger.

1. General.

- a. Definition.** Section 10 of the *VOSH Administrative Regulations Manual* defines imminent danger as “....any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause serious death or serious physical harm immediately or before the imminence of such danger can be eliminated through the standard enforcement procedures,” provided by Title 40.1 of the *Code of Virginia*.
- b. Immediate Correction to Address Imminent Danger.** If, during an inspection, the CSHO believes that an employer has violated any safety or health standard or any conditions of an order granting a variance, and which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the CSHO will post a notice of imminent danger restraining any such condition, practice, method, process, or means in the workplace.
- c. Imminent Danger Conditions.** The following conditions must be met before a hazard becomes an imminent danger and necessitates posting a notice of imminent danger:
 - (1)** Death or serious physical harm must be threatened. Serious physical harm is impairment of the body which renders the affected part of the body functionally useless or substantially less efficient.

- E.1.c.**
- (2)** For a health hazard, there must be a reasonable expectation that:
 - a** Toxic or other health hazards are present; and,
 - b** Exposure to toxic substances will cause harm which shortens life or causes substantial reduction in physical or mental efficiency even though the resulting harm may not show itself immediately.
 - (3)** The threat must be immediate or imminent. The required threat would be present where it is reasonable to believe that there is employee exposure and that death or serious physical harm could occur within a short time if the employer fails or refuses to abate the hazard. A notice of imminent danger will be posted.

2. Pre-inspection Procedures.

- a. When an Imminent Danger Report Is Received.** Any allegation of imminent danger received by a Department office, whether written or oral, shall be handled on a highest priority basis. Other commitments, weekends, holidays, leave, and other considerations cannot interfere with the expedited and thorough handling of these cases. Any inspection that involves an imminent danger situation shall be conducted as expeditiously as possible.
 - (1) Reasonable Basis.** The Compliance Manager shall immediately determine whether there is a reasonable basis for the allegation.
 - (2) Selection of CSHO.** If the imminent danger allegation appears to have merit, the Compliance Manager shall make an evaluation of the inspection requirements and select a CSHO to conduct the inspection.
 - (3) Highest Priority.** Imminent danger reports have the highest inspection priority and should be investigated immediately.
 - (4) Advance Notice When Immediate Inspection Cannot Be Made.** When an immediate inspection cannot be made, the Compliance Manager or CSHO shall contact the employer immediately, obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. A record of what steps, if any, the employer intends to initiate in order to eliminate the danger shall be attached to the case file. Such notification shall be considered advance notice and the inspection shall be handled in accordance with the procedures given in section E.3.b.(2) of this Chapter and in Chapter I, E.6.

- E.2. b. Technical Considerations.** The Compliance Manager and the CSHO selected to perform the inspection shall review the known facts and decide what technical equipment and personnel may be necessary to conduct the inspection. When the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection as expeditiously as possible. The required equipment and/or personnel can be brought in later.
- (1) Use of Specialists.** In highly complex situations, consideration shall be given to use of specialists from Safety or Health staff, staff from other regions, Central Office staff, and other governmental agencies, or, if the situation warrants their use, specialists from outside government. Should the decision be made to use experts, the procedures given in Chapter I, E.8. shall be followed. (See section D.8.b. of this chapter for additional guidance on use of expert assistance.)
 - (2) Equipment.** Calibration and testing of equipment to be used shall be currently valid.
 - (3) Advance Arrangements for Sample Analysis.** If samples are required to determine whether there is an imminent danger situation, rapid analysis is essential. The Compliance Manager shall make advance arrangements with Consolidated Labs.

3. Inspection.

- a. Scope.** Any alleged imminent danger situation brought to the attention of or discovered by the CSHO shall be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation. After the imminent danger situation has been resolved, the CSHO may consider expanding the scope of the inspection, based on the information available during the inspection process.
- b. Special Circumstances.** Because an imminent danger situation is a special circumstance, its inspection shall take place as expeditiously as possible taking priority over other inspections. The following guidelines will facilitate immediate action:
 - (1) Walkaround Representatives.** The opportunity to accompany the CSHO shall be offered to employer and employee representatives unless the nature of the hazard makes it impractical to delay inspection before such representatives can reach the area.

E.3.b.

- (2) Advance Notice.** Section 230 of the *Administrative Regulations Manual* authorizes advance notice of an inspection of an apparent imminent danger situation to enable the employer to eliminate the dangerous condition as quickly as possible, and to remove any exposed employees. If advance notice is given to the employer, it shall also be given to the authorized employee representative. If the inspection is in response to a complaint, advance notice shall also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.
- (3) Refusal to Permit Inspection.** If a CSHO is refused entry while attempting to investigate an alleged imminent danger complaint, a warrant shall be obtained as quickly as possible.
- (4) Preemption Question.** If the report of imminent danger involves a potential jurisdictional dispute with another agency, the guidelines given in Chapter I, E.11. shall be followed.

c. Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the employer shall be advised immediately. The employer shall be requested to notify his employees of the danger and to remove them from the area of imminent danger. The employer should be encouraged to do whatever is possible to eliminate the danger promptly on a voluntary basis.

- (1) Voluntary Elimination of the Imminent Danger.** The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In such cases, no imminent danger proceeding shall be instituted and therefore no Notice Of Alleged Imminent Danger shall be completed, although an appropriate citation and notification of penalty shall be issued.
- (2) What Constitutes Voluntary Elimination.** Voluntary elimination of the danger has been accomplished when the employer has removed employees from the danger area, and has immediately corrected the dangerous condition, practice, means or method of operation or process to permanently eliminate the dangerous condition.
- (3) Anticipated Elimination of Imminent Danger.** There may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out.

In such a case, the CSHO shall consider that elimination of the danger will be accomplished when the employer has removed employees from the danger area and has taken immediate corrective action or has taken steps to ensure permanent elimination.

If the employer cannot do this, then he must give an acceptable promise that permanent corrective action will be taken as soon as possible.

In addition to that, the employees will not be permitted in the area until the danger is corrected, or will be permitted only to enter into or to work in the area if they are wearing personal protective equipment sufficient to eliminate the danger.

E.3.c.

- (4) Action Where Voluntary Elimination Is Accomplished.** If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently as outlined in part E.3.c.(2) above, the CSHO and any other technical support staff present shall advise the employer to the maximum extent possible. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.
- (a) Citation and Notice.** If elimination of the imminent danger is achieved voluntarily, the CSHO shall make the appropriate notation on the VOSH-1B form. Appropriate citation(s) and notice(s) of proposed penalties shall be issued regarding the hazard. (See Chapter IV, B. and C.)
- (b) Informing Employees.** The CSHO shall inform affected employees or their authorized representative(s) that, although an imminent danger had existed, the CSHO has determined that such danger no longer exists. They shall also be informed of the steps to be taken by the employer to eliminate the dangerous condition.
- (c) No Notice of Alleged Imminent Danger, VOSH-8.** No Notice of Alleged Imminent Danger shall be prepared, and no imminent danger proceedings instituted when voluntary elimination of the imminent danger as outlined is accomplished.
- (5) Action Where Voluntary Elimination is Anticipated.** If the employer agrees to eliminate the imminent danger permanently, the CSHO and any other technical support staff present shall provide as much advice to the employer as possible. However, as stated previously, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.
- (a) VOSH-1B Form.** If elimination of the imminent danger is anticipated, the CSHO shall make the appropriate notation on the VOSH-1B Form. Appropriate citation(s) and notice(s) of proposed penalties shall be issued regarding the hazard.

E.3.c.(5)

- (b) **VOSH-8 Form.** The VOSH-8 Form, or Notice of Alleged Imminent Danger, shall be prepared and posted following the procedures set forth.
 - (c) **Follow-up Inspection.** A follow-up inspection will be done within 24 hours to ensure that the necessary elimination has been accomplished. If the anticipated date of elimination is more than 24 hours after the imminent danger inspection, the Compliance Manager will set an appropriate time for the follow-up inspection.
 - (d) **Failure to Eliminate Danger.** If the elimination has not been accomplished by the scheduled elimination date, the CSHO will contact the Compliance Manager who will initiate the process to seek an injunction.
- (6) **When Voluntary Elimination is Not accomplished.** If the employer either cannot or does not voluntarily eliminate the hazard as discussed above, the following procedures shall be observed:
- (a) The CSHO shall call the Compliance Manager who will report to the Regional Director and report the following information:

 - 1 Name and address of establishment;
 - 2 Number of employees affected;
 - 3 Violative condition.
 - (b) The Compliance Manager shall consult with the Regional Director and the Director of the Office of Legal Support.
 - (c) The Regional Director and the Office of Legal Support Director shall contact the Assistant Attorney General and the Commissioner who will decide if an injunction is needed.
- NOTE: The CSHO has no authority either to order the closing down of the operation or to direct employees to leave the area of the imminent danger or the workplace.*
- (d) If it is not feasible to contact the Compliance Manager, the CSHO shall contact the Regional Director to start the process.
 - (e) When the decision to seek an injunction is made, the Director of the Office of Legal Support and the Assistant Attorney General shall make immediate arrangements with the appropriate Commonwealth's Attorney for the initiation of court action.

E.3.c.(6)

- (f) The CSHO shall give first priority in scheduling activities to preparing for litigation in imminent danger matters.

d. **Issuing Notice of Alleged Imminent Danger.** If the employer does not immediately eliminate the danger in the CSHO's presence, the CSHO shall contact the Compliance Manager for approval to complete and post the VOSH-NID Form, Notice of Alleged Imminent Danger, as soon as possible. If the CSHO has to leave the site of the inspection or go a significant distance away to make the phone call, he may issue the notice without prior approval. The CSHO shall contact the Compliance Manager as soon as possible after leaving the site. The Compliance Manager shall contact the Regional Director to begin the injunction process.

(1) **Not a Citation.** The Notice of Alleged Imminent Danger does not constitute a citation of alleged violations or a notice of proposed penalty. It is only a notice that an imminent danger is believed to exist and that the Commissioner may be seeking a court order to restrain the employer from permitting employees to work in the area of the danger until it is eliminated.

(a) The original VOSH-NID Form shall be signed and posted at or near the area in which the exposed employees are working. A copy shall be signed and attached to the inspection report, VOSH-1 Form.

(b) Where there is not a suitable place for posting the VOSH-NID Form, the employer(s) shall be requested to provide a means for posting.

(c) If there is reason to believe that the employees may not see the notice, the CSHO shall tell the affected employees of the location of the Notice of Alleged Imminent Danger, after taking adequate precautions not to be exposed to the danger.

(2) **Authority of Department.** The employer shall be advised that § 40.1-49.4.F. of the *Code of Virginia*, gives the Commissioner or the Commissioner's authorized representative the authority to seek an injunction from the Circuit Court of the jurisdiction of the employer to restrain any condition or practice which is an imminent danger to employees.

4. Citations and Assessed Penalties.

a. **Citations and Penalties.** After an imminent danger has been found, appropriate citations and penalties shall be completed following all procedures. All violations discovered during the inspection shall be cited and penalties assessed, if appropriate, whether or not they relate to the imminent danger situation.

- E.4. b. Effect of Court Action.** Without prior clearance from the Compliance Manager, no citation shall be issued when an injunction is being sought against an imminent danger when court action is being or will be pursued relative to the issuance of an Order and Notice of Immediate Restraint.

5. Follow-up Inspection.

- a. Court Action.** Where a court has issued an injunction in an imminent danger situation, the follow-up inspection shall take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order. (Other guidelines pertaining to follow-up inspections are set forth in section A. of this chapter.)
- b. No Court Action.** Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated in accordance with the provisions of section E.3.c., above, but permanent correction of the condition has not been achieved at the time of the inspection, appropriate citations shall be issued promptly and a follow-up inspection conducted on the date set for abatement.
- c. Immediate Correction.** Where the dangerous condition has been permanently corrected at the time of the inspection, the Compliance Manager shall determine whether a follow-up inspection is necessary in accordance with the guidelines given in Chapter I, B.3.c., *Inspection Priorities*.
- d. Removal of Imminent Danger Notice.** If a VOSH-8 Form, Notice of Imminent Danger, has been posted at the worksite in accordance with the procedures, the CSHO shall remove the notice as soon as the imminent danger situation has been eliminated or it has been determined that a temporary restraining order will not be sought.